In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-97

AGUSTIN MARRERO DE IBERN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that there was insufficient evidence of his criminal intent to falsely personate a foreign diplomat.

After a jury-waived trial in the United States District Court for the Northern District of Indiana, petitioner was convicted of falsely personating a consular official of a foreign government duly accredited to the United States, in violation of 18 U.S.C. 915. Petitioner was placed on probation for a period of two years. The court of appeals affirmed (Pet. App. A).

Petitioner had been arrested in Portage, Indiana, and charged with speeding and driving under the influence of an intoxicating beverage. In response to the charges he filed a plea of immunity, reciting that "by reason of his position as Consul for the Dominican Republic, he having been appointed and commissioned by the

President as such" he was entitled to the "privilege, courtesy and reciprocity extend[ed] to all members of the Diplomatic and Consular Corps" (Tr. 24, 25-26). After a conference in chambers (Tr. 20-22), the immunity plea was granted.

Petitioner was later interviewed at his home by agents of the Federal Bureau of Investigation. He stated that he had been appointed by the President of the Dominican Republic as an Honorary Consul, but recognition by the United States Department of State had been denied (Tr. 30-32). Petitioner stated he knew it was improper to claim immunity under the circumstances, but was using any method available to avoid being convicted (Tr. 33).

At trial petitioner offered into evidence a document from the Consular Department of the Dominican Republic certifying that he had been designated, and still was so designated, an Honorary Consul of the Dominican Republic. He testified that at the time of the alleged personation he believed he held that office (Tr. 58-59, 61).

Petitioner's contention that the evidence was insufficient to sustain his conviction is fully answered in the opinion of the court of appeals, upon which we rely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

AUGUST 1973.